

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.106A and 404A.6, the Economic Development Authority adopts a new Chapter 49, “Historic Preservation and Cultural and Entertainment District Tax Credits,” Iowa Administrative Code.

These rules govern the administration of the Historic Preservation and Cultural and Entertainment District Tax Credit program. The program was previously administered by the Department of Cultural Affairs (DCA) and the Department of Revenue. 2016 Iowa Acts, chapter 1109 (House File 2443), division V, passed by the General Assembly, brought the program under the administration of the Iowa Economic Development Authority (Authority) in consultation with DCA, effective August 15, 2016. The Authority will administer the tax credit portion of the program, while DCA will review the historic components of the project applications. The new rules are based on DCA’s existing rules, but with several changes, including: (1) changes required by 2016 Iowa Acts, House File 2443; (2) limits to developer fees that qualify for the credit; and (3) expansion of rules governing the CPA examination required for projects with final qualified rehabilitation expenditures over \$100,000.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2774C** on October 12, 2016. The Authority received two comments. The first commenter requested that the term “implied notice” in subrule 49.17(3) be further defined or clarified. The Authority has reviewed this comment and determined that any further definition or clarification of this term may conflict with the same statutory language found in Iowa Code section 404A.3(4)“c”(3)(c).

The second commenter requested that the phrase “in all material respects” be added to the end of the first sentence in subparagraph 49.15(2)“d”(2). The Authority has reviewed this comment and determined that the addition of “in all material respects” appropriately clarifies the CPA examination requirement. For this reason, the Authority has decided to make this requested change.

The Authority made additional changes from the Notice in order to update references to Department of Revenue rules that were adopted in **ARC 2928C** (IAB 1/18/17) and in order to update the chapter implementation sentence to reflect the codification of 2016 Iowa Acts, House File 2443.

The Economic Development Authority Board adopted this amendment at its meeting held on January 20, 2017.

This rule making does not have any fiscal impact to the state of Iowa.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement Iowa Code chapter 404A.

These rules will become effective on March 22, 2017.

The following amendment is adopted.

Adopt the following new 261—Chapter 49:

CHAPTER 49 HISTORIC PRESERVATION AND CULTURAL AND ENTERTAINMENT DISTRICT TAX CREDITS

FOR PROJECTS REGISTERED ON OR AFTER AUGUST 15, 2016

261—49.1(303,404A) Purpose. A historic preservation and cultural and entertainment district tax credit may be applied against the income tax imposed under Iowa Code chapter 422, division II, III, or V, or Iowa Code chapter 432 for qualified rehabilitation projects that have entered into and complied with an agreement with the economic development authority (hereinafter referred to as “the authority”) and complied with all applicable terms, laws, and rules. The program is administered by the authority with the assistance of the department of cultural affairs and the department of revenue. The general assembly has mandated that the authority, the department of cultural affairs and the department of

revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department of cultural affairs reviews historic preservation issues and evaluates whether projects comply with the prescribed historic standards for rehabilitation. Once the historical significance and description of rehabilitation have been approved, the authority enters into an agreement with the eligible taxpayer and issues a tax credit upon completion of all program requirements and verification of qualified rehabilitation expenditures. The department of revenue is responsible for administering tax credit transfers and processing tax credit claims. This chapter sets forth the administration of the program by the authority. The administrative rules for the department of cultural affairs' administration of the program can be found in rules 223—48.22(404A) through 223—48.37(303,404A). The administrative rules for the department of revenue's administration of the program may be found in rules 701—42.19(404A), 701—42.55(404A,422), 701—52.48(404A,422), and 701—58.10(404A,422).

261—49.2(404A) Program transition. The 2016 general assembly made several changes to the historic tax credit program, including transferring the primary responsibility for the program's administration to the authority in consultation with the department of cultural affairs. For projects registered prior to August 15, 2016, the program is administered by the department of cultural affairs and the department of revenue pursuant to the statutes and rules that apply to projects registered prior to August 15, 2016. On or after August 15, 2016, the program is administered by the economic development authority in consultation with the department of cultural affairs pursuant to Iowa Code chapter 404A. Chapter 49 applies to projects that are registered on or after August 15, 2016.

261—49.3(404A) Definitions. The definitions listed in rules 223—1.2(17A,303) and 223—35.2(303) shall apply to terms as they are used throughout this chapter. In addition, for purposes of this chapter, unless the context otherwise requires:

"Agreement" means an agreement between an eligible taxpayer and the authority concerning a qualified rehabilitation project as provided in Iowa Code section 404A.3(3) and rule 261—49.14(404A).

"Applicant" means an eligible taxpayer described in rule 261—49.9(404A).

"Assessed value" means the value of the eligible property on the most current property tax assessment at the time that the relevant application or agreement is submitted or the agreement is signed, as applicable.

"Authority" means the economic development authority.

"Barn" means an agricultural building or structure, in whatever shape or design, which was originally used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

"Certificate" means a historic preservation and cultural and entertainment district tax credit certificate issued pursuant to Iowa Code section 404A.3(5).

"Commencement date" means the date set forth in the agreement, which date shall not be later than the end of the fiscal year in which the agreement is entered into.

"Commercial property" means property classified as commercial, industrial, railroad, utility, or multiresidential for property tax purposes under rules 701—71.1(405,427A,428,441,499B), 701—76.1(434), and 701—77.1(428,433,437,438).

"Completion date" means the date on which property that is the subject of a qualified rehabilitation project is placed in service, as that term is used in Section 47 of the Internal Revenue Code.

"Department" means the department of cultural affairs.

"Director" means the director of the economic development authority.

"Eligible taxpayer" means the fee simple owner of the property that is the subject of a qualified rehabilitation project, or another person who will qualify for the federal rehabilitation credit allowed under Section 47 of the Internal Revenue Code with respect to the property that is the subject of a qualified rehabilitation project.

"Federal rehabilitation credit" or *"federal credit"* means the tax credit allowed under Section 47 of the Internal Revenue Code.

“Federal standards” means the U.S. Secretary of the Interior’s standards for rehabilitation set forth in 36 CFR Section 67.7.

“Government funding” or *“funding originating from a government”* includes but is not limited to:

1. Any funding the applicant received from a government; or
2. Funding from a third party or a series of third parties where those funds originally came from a government or were derived from a government payment, grant, loan, tax credit or rebate or other government incentive; or
3. Funding from a third party or a series of third parties where those funds are derived from, secured by, or otherwise received in anticipation of a government payment, grant, loan, tax credit or rebate or other government incentive.

“Historically significant” means a property that is at least one of the following:

1. Property listed on the National Register of Historic Places or eligible for such listing.
2. Property designated as contributing to a district listed in the National Register of Historic Places or eligible for such designation.
3. Property or district designated a local landmark by a city or county ordinance.
4. A barn constructed prior to 1937.

“Large project” means a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than \$750,000.

“Noncommercial property” means property other than “commercial property” as defined in this rule. “Noncommercial property” includes barns constructed prior to 1937.

“Nonprofit organization” means an organization described in Section 501 of the Internal Revenue Code unless the exemption is denied under Section 501, 502, 503, or 504 of the Internal Revenue Code. “Nonprofit organization” does not include a governmental body, as that term is defined in Iowa Code section 362.2.

“Placed in service” means the same as used in Section 47 of the Internal Revenue Code.

“Program” means the historic preservation and cultural and entertainment district tax credit program set forth in this chapter.

“Property” means the real property that is the subject of a “qualified rehabilitation project” or that is the subject of an application to become a qualified rehabilitation project.

“Qualified rehabilitation expenditures” or *“QREs”* means expenditures that meet the definition of “qualified rehabilitation expenditures” in Section 47 of the Internal Revenue Code and as described in rule 261—49.4(404A).

“Qualified rehabilitation project” or *“project”* means a project for the rehabilitation of property in this state that meets all of the following criteria:

1. The property is historically significant as defined in this rule.
2. The property meets the federal standards as defined in this rule.
3. The project is a substantial rehabilitation as defined in this rule.

“Related entities” means any entity owned or controlled in whole or in part by the applicant; any person or entity that owns or controls in whole or in part the applicant; or any entity owned or controlled in whole or in part by any current or prospective officer, principal, director, or owner of the applicant.

“Related persons” means any current or prospective officer, principal, director, member, shareholder, partner, or owner of the applicant.

“SHPO” means the state historic preservation office at the department of cultural affairs.

“Small project” means a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of \$750,000 or less.

“Substantial rehabilitation” means qualified rehabilitation costs that meet or exceed the following:

1. In the case of commercial property, costs totaling at least 50 percent of the assessed value of the property, excluding the land, prior to the rehabilitation or at least \$50,000, whichever is less; or
2. In the case of noncommercial property, costs totaling at least \$25,000 or 25 percent of the assessed value, excluding the land, prior to rehabilitation, whichever is less.

“Tax credit” or *“historic tax credit”* means the historic preservation and cultural and entertainment district tax credit established in Iowa Code chapter 404A.

261—49.4(404A) Qualified rehabilitation expenditures.

49.4(1) Definition. “Qualified rehabilitation expenditures” or “QREs” means expenditures that meet the definition of “qualified rehabilitation expenditures” in Section 47 of the Internal Revenue Code and are specified in the agreement.

49.4(2) Expenditures incurred by nonprofit organizations. Notwithstanding the foregoing subrule, expenditures incurred by an eligible taxpayer that is a nonprofit organization shall be considered “qualified rehabilitation expenditures” if they are any of the following:

a. Expenditures made for structural components, as that term is defined in Treasury Regulation §1.48-1(e)(2).

b. Expenditures made for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, and development fees.

49.4(3) What expenditures qualify. “Qualified rehabilitation expenditures” may include:

a. Expenditures incurred prior to the date an agreement is entered into under Iowa Code section 404A.3(3). The amount of the historic tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the authority following project completion, up to the amount specified in the agreement between the eligible taxpayer and the authority.

b. Reasonable developer fees. The authority may establish limits on developer fees and may adjust those limits. Any adjustment made to the established limit shall take effect 24 months after the adjustment is published on the authority’s Web site. Developer fees that are qualified rehabilitation expenditures and that meet the limits effective at the time the registration application is submitted shall be deemed reasonable by the authority.

49.4(4) Government financing. “Qualified rehabilitation expenditures” does not include those expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under Section 47 of the Internal Revenue Code. For an eligible taxpayer that is not eligible for the federal rehabilitation credit, expenditures financed with federal, state, or local government grants or forgivable loans are not qualified rehabilitation expenditures.

261—49.5(404A) Historic preservation and cultural and entertainment district tax credit.

49.5(1) Tax credit. An eligible taxpayer who has entered into and complied with an agreement under Iowa Code section 404A.3(3) and has complied with the program statutes and rules is eligible to claim a historic tax credit of 25 percent of the qualified rehabilitation expenditures of a qualified rehabilitation project that are specified in the agreement. Notwithstanding any other provision in Iowa Code chapter 404A, this chapter, or any provision in the agreement to the contrary, the amount of the tax credit shall not exceed 25 percent of the final qualified rehabilitation expenditures verified by the authority pursuant to Iowa Code section 404A.3(5) “c.”

49.5(2) Who may claim the credit. The tax credit shall be allowed against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432. An individual may claim a tax credit under this rule of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the estate or trust. For an individual claiming a tax credit of a partnership, limited liability company, or S corporation, the amount claimed by the partner, member, or shareholder, respectively, shall be based upon the amounts designated by the eligible partnership, S corporation, or limited liability company, as applicable.

49.5(3) Transferability. Tax credit certificates issued under Iowa Code section 404A.3 may be transferred to any person. For information on transfer of tax credits under this program, see department of revenue rules 701—42.55(404A,422), 701—52.48(404A,422), and 701—58.10(404A,422).

49.5(4) Refundability and carryforward. An eligible taxpayer or a transferee may elect to receive either a refundable or a nonrefundable tax credit. For information on refundable and nonrefundable tax credits, including the carryforward of nonrefundable tax credits, see department of revenue rules 701—42.55(404A,422), 701—52.48(404A,422), and 701—58.10(404A,422).

49.5(5) *How to claim the tax credit.* For information on how to claim the tax credit, see department of revenue rules 701—42.55(404A,422), 701—52.48(404A,422), and 701—58.10(404A,422).

261—49.6(404A) Management of annual aggregate tax credit award limit. The authority shall not register, as described in rule 261—49.13(404A), more projects in a given fiscal year for tentative awards than there are tax credits available for that fiscal year under Iowa Code section 404A.4. The authority will determine the projects for which sufficient tax credits are available based on the estimated qualified rehabilitation expenditures identified in the registration application, plus allowable cost overruns as described in paragraph 49.14(1)“c.”

49.6(1) *Registration scoring.* If applicants’ total tax credit requests from a fiscal year allocation exceed the tax credit allocation for that fiscal year, the authority will prioritize its determinations based on the applicants’ registration scores. All registered projects must meet the minimum score as described in rule 261—49.13(404A). If there are no more projects that meet the minimum score as described in rule 261—49.13(404A), the authority may make the remaining tax credits available for small projects or allow the remaining tax credits for the fiscal year to carry forward to the succeeding fiscal year to the extent permitted by Iowa Code section 404A.4.

49.6(2) *Registrations for future tax credit allocations.* Registrations for future tax credit allocations require a new application. When registering projects for a particular fiscal year, the authority shall not award, reserve, or register tax credits from future fiscal years’ tax credit allocations. An applicant whose project is not registered due to an insufficient score or noncompliance with the application or the program statute or rules may submit future applications for future fiscal year tax credit allocations.

49.6(3) *Reallocation or rollover of available tax credit awards.* Tax credits may be reallocated or rolled over into future fiscal years to the extent permitted by Iowa Code section 404A.4.

261—49.7(404A) Application and agreement process, generally.

49.7(1) All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the authority. Information about the program and a link to the online application and instructions may be obtained by contacting the authority or by visiting the authority’s Web site:

Iowa Economic Development Authority
Community Development Division
200 East Grand Avenue, Des Moines, Iowa 50309
(515)725-3000
<http://iowaeconomicdevelopment.com/>

49.7(2) An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided.

49.7(3) The application and agreement process consists of six steps:

a. The applicant submits a Part 1 application to the authority, which is used to evaluate the property’s integrity and significance. The authority will consult with SHPO when reviewing the Part 1 application.

b. Unless the Part 1 application is denied by the authority, the applicant participates in a preapplication meeting with SHPO and the authority to discuss what to expect for the remainder of the application process.

c. If the Part 1 application is approved and the preapplication meeting is completed, the applicant submits a Part 2 application to the authority, which is used to evaluate the proposed rehabilitation work. The authority will consult with SHPO when reviewing the Part 2 application.

d. If the Part 2 application is approved, the applicant submits a registration application to the authority, which is used to score the applicant’s rehabilitation plan and financial readiness. If the project is awarded a sufficient registration score, satisfies other requirements of the application and program, and sufficient tax credits are available, the authority may register the project.

e. If the project is registered, the applicant may enter into an agreement with the authority that establishes the maximum amount of the tax credit award and the terms and conditions that must be met to

receive the tax credits. An applicant must enter into and comply with an agreement in order to participate in the program and claim any tax credits.

f. Once the project is completed and the property is placed in service, the applicant submits a Part 3 application to the authority, which is used to evaluate whether the completed work meets the federal standards and the other requirements of the agreement, laws, and regulations of the program. The authority will consult with SHPO when reviewing the Part 3 application.

A more detailed description of each step is provided in rules 261—49.10(404A) through 261—49.15(404A).

261—49.8(404A) Small projects. Projects with anticipated final qualified rehabilitation expenditures of more than \$750,000 will be evaluated as large projects. Projects with \$750,000 or less in anticipated final rehabilitation expenditures will be evaluated as small projects. If an applicant anticipates that the final qualified rehabilitation expenditures will exceed \$750,000, the applicant may only submit its application as a large project. The authority will not permit a small project applicant to submit additional or amended applications that would cause the final qualified expenditures to exceed \$750,000.

49.8(1) *Small project fund.* The authority shall allocate at least 5 percent of its annual fiscal year tax credit award limit to small projects.

49.8(2) *Aggregate award limit.* For applicants that receive credits from the small project allocation, the cumulative total award for multiple applications for a single property shall not exceed \$750,000 in qualified rehabilitation expenditures plus any allowable cost overruns as described in paragraph 49.14(1) “c,” regardless of the final qualified rehabilitation expenditures. The authority will not accept an application by the same owner for a property for which credits were previously received through the small project fund if the application causes the cumulative total to exceed \$750,000, plus any allowable cost overruns as described in paragraph 49.14(1) “c.”

49.8(3) *Application and agreement process.* The Part 1, Part 2, and Part 3 application process and the agreement requirements are the same for small projects as for large projects. The registration process for small projects differs from that for large projects. See subrule 49.13(8) for more information on the registration process for small projects.

261—49.9(404A) Who may apply for the tax credit. Only an eligible taxpayer may apply for the tax credit. To be an eligible taxpayer, the applicant must be either (1) the fee simple owner or (2) a person that will ultimately qualify for the federal rehabilitation credit with respect to the qualified rehabilitation project. A nonprofit organization as defined in rule 261—49.3(404A) may apply for the tax credit if the nonprofit organization is the fee simple owner of the property.

49.9(1) *Applicants that are fee simple owners.* If the applicant qualifies as an eligible taxpayer on the basis that the applicant is the fee simple owner of the property, the applicant will be expected to provide proof of title as described in subrule 49.10(2).

49.9(2) *Applicants that will qualify for the federal credit.* If the applicant qualifies as an eligible taxpayer on the basis that the applicant will qualify for the federal rehabilitation credit with regard to the property, the applicant will be asked to provide increasingly substantial evidence as described in subrules 49.10(2) and 49.12(1) that the applicant will qualify for the federal credit, culminating with proof of actual fee simple ownership or a long-term lease that meets the requirements of the federal rehabilitation credit before the agreement is entered into with the authority. Applicants that are eligible to apply under this subrule must obtain from the fee simple owner of the property a written statement which indicates that the owner is aware of the application and has no objection and include the statement with the application.

49.9(3) *Who may not apply.* Government bodies as defined in Iowa Code section 362.2 may not apply. Additionally, an applicant may not initiate the application process to apply for tax credits by submitting a Part 1 application on a project if all of the work has been completed and the qualified rehabilitation project has already been placed in service.

261—49.10(404A) Part 1 application—evaluation of significance. The Part 1 application is used to determine whether the property is eligible to be a qualified rehabilitation project.

49.10(1) *Types of property that are eligible.* The property must meet the federal standards for historical significance.

49.10(2) *Proof of status as eligible taxpayer.* The Part 1 application may be submitted to the authority by an eligible taxpayer as described in rule 261—49.9(404A).

a. To prove the applicant is the fee simple owner, the applicant will be expected to provide title documentation. If the title is held in the name of an entity, the application must be accompanied by documentation which indicates that the signatory is the authorized representative of the entity.

b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the approved federal Part 1 application, unless the property is individually listed on the National Register of Historic Places. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit, and the applicant must provide proof of permission from the fee simple owner as described in subrule 49.9(2).

49.10(3) *Submission period.* Part 1 applications may be submitted year-round.

49.10(4) *Required information.* Applicants must provide the authority a site plan, pre-rehabilitation photographs of the property, a copy of the county assessor's statement for the property, and such other information as the authority may require.

49.10(5) *Review process.* The authority, in consultation with SHPO, will evaluate the appearance and condition of the building and verify the information provided by the applicant. The authority will notify the applicant if the Part 1 application is incomplete. Generally, the authority will review fully completed Part 1 applications within 90 calendar days of receipt. The 90-day review period will be adhered to as closely as possible; however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the authority must request additional information, the 90-day review period will restart when the requested information is received by the authority. The application may be rejected if any requested information is not provided.

49.10(6) *Response from the authority.* Upon completion of the review, the authority shall issue a determination regarding whether the property meets the requirements to be considered historically significant.

49.10(7) *Period of validity.* A determination that the property meets the requirements to be considered historically significant shall be valid for five years from the issuance of the determination, provided that the property is maintained in a manner consistent with the federal standards and that the fee simple owner of the property remains the same during such period. Changes to the property that are not approved by the authority shall automatically invalidate the determination of historical significance, and reestablishment of the historical significance of the property as well as submittal of a new Part 1 application for a determination that the property is eligible shall be required.

49.10(8) *Amendments.* An applicant shall amend an approved Part 1 application if the property changes ownership or if the applicant's name or address changes prior to submission of a Part 2 application.

261—49.11(404A) Preapplication meeting. The purpose of the preapplication meeting is to provide feedback to the applicant and other interested parties that will enable the applicant to better plan and prepare for submission of the Part 2 and registration applications.

49.11(1) *Meeting requests.* Once the completed Part 1 application is submitted, the applicant may request a preapplication meeting by using the preapplication form, which may be obtained by contacting the authority or by visiting the authority's Web site.

49.11(2) *Timing of the preapplication meeting.* The meeting must take place no fewer than 30 days after the submission of the Part 1 application and prior to submission of the Part 2 application. Meetings may be held by telephone at the authority's discretion.

49.11(3) *Required information.* The applicant must bring at least the following items to the meeting: preliminary drawings, photographs of the exterior (all elevations) and interior, a preliminary list of character-defining features and treatments or a draft Part 2 application, and a list of questions for which

specific guidance is needed. The authority may request additional information. If the preapplication meeting will be held by telephone, the required documents must be submitted electronically at least one week prior to the meeting date.

261—49.12(404A) Part 2 application—description of rehabilitation. The purpose of the Part 2 application is to determine whether the proposed rehabilitation work meets the federal standards. The applicant must describe the rehabilitation work to be undertaken on the property. The review of the Part 2 application is a preliminary determination only and is not binding upon the authority. A formal certification of rehabilitation shall be issued only after the rehabilitation work is completed.

49.12(1) Proof of status as eligible taxpayer. The Part 2 application must be submitted by an eligible taxpayer as described in rule 261—49.9(404A).

a. An applicant that is the fee simple owner does not need to provide any additional information regarding ownership unless there has been a change in ownership since the Part 1 application was approved.

b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the signature page of the approved federal Part 2 application signed by the National Park Service. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit and must provide proof of permission from the fee simple owner as described in subrule 49.9(2).

49.12(2) Submission period. Part 2 applications may be submitted at any time after the project has received an approved Part 1 and the applicant has participated in the preapplication meeting.

49.12(3) Required information.

a. The applicant must provide any information requested by the authority, including but not limited to:

- (1) A detailed description of the rehabilitation;
- (2) An estimate of the total costs related to the rehabilitation and other work to be completed on the property, regardless of whether the costs will ultimately be qualified rehabilitation costs;
- (3) An estimate of the qualified rehabilitation expenditures; and
- (4) Photographs.

b. The applicant must also identify whether the applicant plans to submit a registration application as a small project or a large project. For more information on the differences in the registration application process for large projects and small projects, see rule 261—49.8(404A).

49.12(4) Review process. The authority, in consultation with SHPO, will evaluate the proposed work to determine whether the proposed project, including any new construction, is consistent with the federal standards, the historic character of the property and, where applicable, the registered or potential district in which the property is located. The authority will notify the applicant if the Part 2 application is incomplete. Generally, the authority will review fully completed Part 2 applications within 60 calendar days of receipt. The 60-day review period will be adhered to as closely as possible; however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the authority must request additional information, the 60-day review period will restart when the requested information is received by the authority. The application may be rejected if any requested information is not provided.

49.12(5) Response from the authority. The review of the complete Part 2 application shall result in one of three responses:

a. Approval. The project is eligible to submit a registration application because the proposed rehabilitation described in the application is consistent with the historic character of the property or of the district in which the property is located and the project, as proposed, appears to meet the federal standards;

b. Approval with conditions. The project is eligible to submit a registration application because the proposed rehabilitation described in the application will likely meet the federal standards if the stipulated conditions are met; or

c. Denial. The rehabilitation described in Part 2 of the application is not consistent with the historic character of the property or of the district in which the property is located and the project does

not meet the federal standards. The project is ineligible for registration. The project may amend its Part 2 application or submit a new Part 2 application for the property.

49.12(6) Amendments. Deviation from the original rehabilitation proposal could result in the denial of final project approval and revocation of the tax credit award. An applicant shall amend an approved Part 2 application to notify the authority of, and to request review of, modifications to or deviations from the original rehabilitation proposal. Applicants that undertake any work not in the original approved Part 2 application without approval of the authority do so at their own risk. Amendments to the Part 2 application shall not result in the awarding of additional tax credits for the project and may result in a reduction in the tax credit award specified in the agreement if the authority determines that the work is not consistent with the federal standards or does not otherwise comply with the requirements of the agreement. Amendments to the Part 2 application will not be accepted after the authority has approved the Part 3 application pursuant to rule 261—49.15(404A). Amendments must be submitted on forms approved by the authority and may be obtained by contacting the authority or by visiting the authority's Web site.

261—49.13(404A) Registration application. If the authority has approved Part 1 and Part 2 applications for a project, the applicant may submit a historic tax credit registration application to the authority during the applicable registration period. The registration application is used to determine whether the project is ready to proceed both financially and logistically. The registration application is also used to confirm whether the proposed work will meet the substantial rehabilitation test and whether the project is a small project or a large project. The registration application is also used to obtain background information, including information that may disqualify an applicant from participating in the program, as well as other information about the applicant, related persons, and related entities. Though the application process is largely the same for small projects as it is for large projects, there are some differences. For details on those differences, see rule 261—49.8(404A).

49.13(1) Proof of status as eligible taxpayer. An eligible taxpayer as defined in rule 261—49.3(404A) may submit a registration application.

a. An applicant that is the fee simple owner must notify the authority of any changes in ownership status since the Part 2 application was filed.

b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant's application will be scored based on the steps taken toward ownership as described in subrule 49.13(6). The applicant must certify that the applicant understands that the applicant will not qualify for any state historic tax credit if the applicant is not the fee simple owner or not otherwise an eligible taxpayer. The applicant must also provide proof of permission from the fee simple owner as described in subrule 49.9(2).

49.13(2) Submission period. In general, applications for registration will only be accepted during the established application period, or periods, as identified by the authority on its Web site. However, applications for small project registration will be accepted year-round.

49.13(3) Required information. The registration application must include the following information as well as any additional information the authority may request: total project cost, an estimated schedule of qualified rehabilitation expenditures and a schedule of all funding sources received or anticipated to be received that will be used to fund the project, including those funding sources used or that will be used to finance or reimburse both qualified rehabilitation expenditures and those expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 261—49.3(404A), including any funding that originated or will originate from any government, whether federal, state, or local.

49.13(4) Certification and release of information. The applicant must identify and list all related persons and related entities, as those terms are defined in rule 261—49.3(404A). The applicant must release information requested by the authority regarding the applicant, related persons, and related entities. The applicant must also certify that all representations, warranties, documents, or statements made or furnished in connection with the registration application are true and accurate. The certification and release of information are intended to identify information that will disqualify an applicant from

participating in the program or that may have an adverse impact on the project. The certification and release of information are also intended to provide the authority with information regarding the economic, ownership, and management realities related to the project by providing information about the actual persons and businesses affiliated with the applicant, the actual persons and businesses that will derive financial benefits from the project, and other businesses affiliated with the individuals involved with the project.

a. The authority shall reject an application for registration if any of the following occurs or exists:

(1) The applicant fails to answer the questions and provide all requested information and documents in a timely manner as required by the rules or the application or in a timely manner as otherwise requested by the authority.

(2) The applicant provides false or inaccurate information or documents to the authority.

(3) The applicant, a related person, or a related entity has not filed any local, state, or federal tax returns that are due. This provision shall not apply to an applicant, related person, or related entity that has timely filed an extension to file a local, state or federal tax return.

(4) The applicant, a related person, or a related entity has any overdue local, state, or federal tax liability, including any tax, interest, or penalty.

(5) The applicant, a related person, or a related entity is currently in default, has an uncured breach, or is otherwise not in compliance with any contract, grant award, or tax credit program with the state of Iowa, any agency of the state of Iowa, or any other entity or instrumentality of the state of Iowa.

(6) The applicant, a related person, or a related entity has any overdue amounts owed to the state of Iowa, any agency of the state of Iowa, any other entity or instrumentality of the state of Iowa, or any person or entity that is eligible to submit claims to the state offset system under Iowa Code section 8A.504.

(7) The authority determines that registering the project, entering into an agreement with the authority, or permitting the applicant's tax credit claim would cause the applicant or another person to default on, breach, or otherwise not comply with any contract, grant award, or tax credit program with the state of Iowa, any agency of the state of Iowa, or any other entity or instrumentality of the state of Iowa.

(8) The authority determines that the applicant will not be able to provide representations, warranties, conditions, or other terms of an agreement that would be acceptable to the authority.

(9) Information is disclosed to the authority that would cause the authority to decline to enter into an agreement with the applicant.

b. Scope of inquiry. The authority may ask the applicant to disclose information and documents about other entities affiliated with the applicant, a related person, or a related entity if the authority determines that the information regarding the applicant, related persons, and related entities does not adequately disclose to the authority the economic, ownership, and management structure and realities related to a project.

49.13(5) Review period. In general, the authority will review fully completed registration applications within 30 calendar days of receipt. The 30-day review period will be adhered to as closely as possible; however, it is not mandatory. If any answers, responses, explanations, documents, or other information submitted in connection with the certification and release of information changes after the applicant has submitted this information to the authority, the applicant must supplement its response to the certification and release of information in writing within 10 business days of the change. If the application is incomplete when submitted or if for any other reason the authority must request additional information, the 30-day review period will restart when the requested information is received by the authority. The authority may reject an application if any requested information is not provided.

49.13(6) Scoring process. All completed applications will be reviewed and scored. In order for a project to be considered for registration, the application must meet a minimum score as established by the authority and set forth in the current registration application. Scoring of the application will take into account readiness criteria, which may include the following:

a. Rehabilitation planning and project readiness. Projects will be scored based on whether the Part 2 application was approved with or without conditions.

- b.* Secured financing. Weighted preference will be given to projects that have financing or equity or both in place.
- c.* Steps taken towards ownership. Weighted preference will be given to the projects of applicants that are currently fee simple owners of the property.
- d.* Local government support. Weighted preference will be given to projects that have received support from their local jurisdiction.
- e.* Rehabilitation timeline. Weighted preference will be given to projects that will be completed in the shortest amount of time.
- f.* Zoning and code review. Weighted preference will be given to the projects of applicants that can demonstrate a determination by the authority having jurisdiction that the project complies with the guidelines for construction permitting.
- g.* Such other information as the authority may find relevant and request on the registration application.

49.13(7) Registration. Upon reviewing and scoring all applications that are part of the application period, the authority may register the qualified rehabilitation projects to the extent sufficient tax credits are available based on the estimated qualified rehabilitation costs identified in the registration applications. Only projects that meet the minimum score established by the authority may be registered. As described in rule 261—49.6(404A), in the case of insufficient funding, preference will be given to the projects with the highest registration score based on the criteria in subrule 49.13(6). At the time the project is registered, the authority shall make a preliminary determination as to the amount of tax credits for which the project qualifies. The authority shall make best efforts to notify the applicant within 45 calendar days after the close of the registration period as to whether the applicant's project has been registered. The registration notice shall include the amount of the applicant's tentative tax credit award, along with a notice that the amount is a preliminary, nonbinding determination only. The authority will notify applicants whose projects were not registered and state whether the failure to register the project was due to the failure of the project to meet the minimum score, the lack of available tax credits, or another reason. A list of registered applicants will be posted by the authority on the authority's Web site.

49.13(8) Small project registration application. The authority may establish for small projects a registration application form and process that differ from the application form and process used for large projects. Small project application forms may be obtained by contacting the authority or by visiting the authority's Web site. Small projects may submit registration applications year-round; however, the registration application must be submitted no later than 180 calendar days after receipt of approval of the Part 2 application from the authority. Small project registration applications will be evaluated on a first-come, first-served basis, subject to the availability of tax credits.

261—49.14(404A) Agreement. Upon successful registration of the project as described in subrule 49.13(7) or 49.13(8), the eligible taxpayer shall have 120 calendar days or until the end of the fiscal year, whichever is less, to purchase or lease the property, if applicable, and enter into an agreement with the authority. Nothing in these rules shall affect the authority's ability to comply with the annual award limitations described in Iowa Code section 404A.4. A condition precedent to any agreement will be proof that the eligible taxpayer is the actual fee simple owner or has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit. An eligible taxpayer shall not be eligible for historic tax credits unless the eligible taxpayer enters into an agreement with the authority concerning the qualifying rehabilitation project and satisfies the terms and conditions that must be met to receive the tax credit award.

49.14(1) Terms and conditions. The agreement shall contain mutually agreeable terms and conditions, which shall, at a minimum, provide for the following:

- a.* The maximum amount of the tax credit award. Notwithstanding anything in this chapter to the contrary, no tax credit certificate shall be issued until the authority verifies the amount of final qualified rehabilitation expenditures and compliance with all other requirements of the agreement, Iowa Code chapter 404A, and the applicable rules.

b. The rehabilitation work to be performed. An eligible taxpayer shall perform the rehabilitation work consistent with the U.S. Secretary of the Interior's standards for rehabilitation, as determined by the department.

c. The budget of the qualified rehabilitation project, including the projected qualified rehabilitation expenditures, and those expenditures not qualified, and allowable cost overruns. The amount of allowable cost overruns provided for in the agreement shall not exceed the following amounts:

(1) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of not more than \$750,000, 15 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(2) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than \$750,000 but not more than \$6 million, 10 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(3) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than \$6 million, 5 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

d. A schedule of all funding sources received or anticipated to be received that will be used to fund the project, including those funding sources used or that will be used to finance or reimburse both qualified rehabilitation expenditures and those expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 261—49.3(404A), including any funding that originated or will originate from any government, whether federal, state, or local.

e. The commencement date.

f. The completion date.

g. The agreement termination date, which shall not be earlier than five years from the date on which the tax credit certificate is issued.

h. Such other terms, conditions, representations, and warranties as the authority may determine are necessary or desirable to protect the interests of the state.

49.14(2) Amendments. The authority may for good cause amend an agreement. However, the authority may not amend an agreement to allow cost overruns in excess of the amount described in paragraph 49.14(1)“c.” In addition, the commencement date, completion date, and agreement termination date may not be amended if such an amendment would violate the statutorily prescribed time limits as described in Iowa Code section 404A.3(3). Any amendment approved by the authority shall be signed by both parties.

49.14(3) Authority. Only the director or chief operating officer may enter into agreements on behalf of the authority. Any agreement entered into on behalf of the authority by a person other than the director or chief operating officer shall be void.

261—49.15(404A) Part 3 application—request for certification of completed work and verification of qualified rehabilitation expenditures. Part 3 of the application is used to determine whether the project has complied with the terms of the agreement as well as with applicable laws, rules and regulations.

49.15(1) Submission period. The fully completed Part 3 application must be submitted no more than 180 calendar days after the project completion date as defined in the agreement.

49.15(2) Required information. The Part 3 application must include the following information:

a. Certification that the eligible taxpayer is the fee simple owner or is qualified for the federal rehabilitation credit and has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit.

b. Using the qualified rehabilitation expenditures schedule form provided by the authority, a schedule of total expenditures for the project, which shall identify in detail the final qualified rehabilitation expenditures and those expenditures that are not qualified. The qualified rehabilitation

expenditures schedules form may be obtained by contacting the authority or by visiting the authority's Web site.

c. A schedule of all funding sources used to finance the project, including those funding sources used to finance or reimburse both qualified rehabilitation expenditures and expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 261—49.3(404A), including any funding that originated from any government, whether federal, state, or local.

d. CPA examination.

(1) An eligible taxpayer shall engage a certified public accountant authorized to practice in this state to conduct an examination of the project in accordance with the American Institute of Certified Public Accountants' statements on standards for attestation engagements. The attestation applicable to this examination is SSAE No. 10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601. Upon completion of the qualified rehabilitation project, the eligible taxpayer shall submit the examination to the authority, along with a statement of the amount of final qualified rehabilitation expenditures and any other information deemed necessary by the authority in order to verify that all requirements of the agreement, Iowa Code chapter 404A, and all rules adopted pursuant to Iowa Code chapter 404A have been satisfied.

(2) The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA's professional judgment, the qualified rehabilitation expenditures claimed are eligible pursuant to the agreement, Iowa Code chapter 404A, and all rules adopted pursuant to Iowa Code chapter 404A in all material respects. The documents reviewed by the CPA should be readily available to the authority upon request. The applicant should generally be able to provide the requested documents within 10 business days of a request from the authority.

(3) The examination requirement is waived for an eligible taxpayer if the final qualified rehabilitation expenditures of the qualified rehabilitation project, as verified by the authority, do not exceed \$100,000 and the qualified rehabilitation project is funded exclusively by private funding sources. The authority reserves the right to request any additional information necessary to verify the final qualified rehabilitation expenditures and, if deemed necessary by the authority, to require that such an eligible taxpayer engage a CPA to conduct an examination of the project pursuant to 49.15(23) "d."

e. Any other information deemed necessary by the authority in order to verify that all requirements of the agreement, Iowa Code chapter 404A, and all rules adopted pursuant to Iowa Code chapter 404A have been satisfied.

f. Election to receive either a refundable or a nonrefundable tax credit. The taxpayer's election does not impact a transferee's ability to make its own election upon transfer. For information on transferring tax credits, see department of revenue rules 701—42.55(404A,422) and 701—52.48(404A,422).

g. Any information the authority may require for program evaluation.

49.15(3) Review period. The authority will make best efforts to review Part 3 applications within 60 calendar days after the application is filed. However, this time frame is not binding upon the authority. The authority shall review the information submitted by the eligible taxpayer and determine whether a tax credit certificate may be issued. See rule 261—49.17(404A) for more information on certificate issuance.

261—49.16(404A) Fees. Applicants must pay a nonrefundable fee for the processing of Parts 2 and 3 of an application. The review fee for Part 2 will be due with the filing of the Part 2 application and will be based on the estimated qualified rehabilitation costs. The fee for review of Part 3 will be due with the filing of the Part 3 application and will be based on the final qualified rehabilitation expenditures. The fee schedule is as follows:

For projects with qualified rehabilitation expenditures of:	Part 2 Processing Fee	Part 3 Processing Fee
\$50,000 or less	No cost	No cost
\$50,001 to \$100,000	\$250	\$250
\$100,001 to \$750,000	\$500	\$500
\$750,001 to \$6,000,000	\$1,000	0.5 percent of final qualified rehabilitation expenditures
Over \$6,000,000	\$1,500	\$30,000

261—49.17(404A) Compliance.

49.17(1) *Annual reports.* The eligible taxpayer shall, for the length of the agreement, annually certify to the authority compliance with the requirements of the agreement. The certification shall be due each year on the anniversary of the date upon which the agreement was entered into. Instructions and forms may be obtained by contacting the authority or by visiting the authority's Web site.

49.17(2) *Burden of proof.* The eligible taxpayer shall have the burden of proof to demonstrate to the authority that all requirements of the agreement, Iowa Code chapter 404A, and the applicable rules are satisfied. The taxpayer shall notify the authority in a timely manner of any changes in the qualification of the rehabilitation project or in the eligibility of the taxpayer to claim the tax credit provided under this chapter, or of any other change that may have a negative impact on the eligible taxpayer's ability to successfully complete any requirement under the agreement.

49.17(3) *Events of default, revocation, recapture.* If, after entering into the agreement but before a tax credit certificate is issued, the eligible taxpayer or the qualified rehabilitation project no longer meets the requirements of the agreement, Iowa Code chapter 404A, and the applicable rules, the authority may find the taxpayer in default and may revoke the tax credit award.

a. Voluntary abandonment. An applicant may choose to irrevocably decline the tax credit that is the subject of the agreement at any time after the agreement is entered into. To irrevocably decline the tax credit, the applicant shall send a letter to the authority stating the applicant's decision to irrevocably decline the tax credit. The authority shall notify the applicant by certified U.S. mail or courier that the tax credit has been irrevocably declined. The tax credit shall be reallocated to the extent permitted by Iowa Code section 404A.4. If the applicant wishes to apply for a tax credit on the same qualified rehabilitation project at a later date, the applicant must complete the application process as though the project is a new project.

b. Revocation and recapture for prohibited activity; liability of certain transferees. If an eligible taxpayer obtains a tax credit certificate from the authority by way of a prohibited activity, the eligible taxpayer and any transferee shall be jointly and severally liable to the state for the amount of the tax credits so issued, interest and penalties allowed under Iowa Code chapter 422, and reasonable attorney fees and litigation costs, except that the liability of the transferee shall not exceed an amount equal to the amount of the tax credits acquired by the transferee. The department of revenue, upon notification or discovery that a tax credit certificate was issued to an eligible taxpayer by way of a prohibited activity, shall revoke any outstanding tax credit and seek repayment of the value of any tax credit already claimed, and the failure to make such a repayment may be treated by the department of revenue in the same manner as a failure to pay the tax shown due or required to be shown due with the filing of a return or deposit form. A qualifying transferee is not subject to the liability, revocation, and repayment imposed under this paragraph. For purposes of this paragraph:

(1) "*Control*" means when a person, directly or indirectly or acting through or together with one or more persons, satisfies any of the following:

1. Owns, controls, or has the power to vote 50 percent or more of any class of voting securities or voting membership interests of another person.
2. Controls, in any manner, the election of a majority of the directors, managers, trustees, or other persons exercising similar functions of another person.

3. Has the power to exercise a controlling influence over the management or policies of another person.

(2) “*Prohibited activity*” means a breach or default under the agreement with the authority, the violation of any warranty provided by the eligible taxpayer to SHPO or the authority, the claiming of a tax credit issued under this chapter for expenditures that are not qualified rehabilitation expenditures, the violation of any requirements of Iowa Code chapter 404A or rules adopted pursuant to Iowa Code chapter 404A, misrepresentation, fraud, or any other unlawful act or omission.

(3) “*Qualifying transferee*” means a transferee who acquires a tax credit certificate issued under this chapter for value, in good faith, without express or implied notice of a prohibited activity of the eligible taxpayer who was originally issued the tax credit, and without express or implied notice of any other claim to or defense against the tax credit, and which transferee is not associated with the eligible taxpayer by being one or more of the following:

1. An owner, member, shareholder, or partner of the eligible taxpayer who directly or indirectly owns and controls, in whole or in part, the eligible taxpayer.

2. A director, officer, or employee of the eligible taxpayer.

3. A relative of the eligible taxpayer or a person listed in paragraph “1” or “2” of this subparagraph or, if the eligible taxpayer or an owner, member, shareholder, or partner of the eligible taxpayer is a legal entity, the natural persons who ultimately own such legal entity.

4. A person who is owned or controlled, in whole or in part, by a person listed in paragraph “1” or “2” of this subparagraph.

(4) “*Relative*” means an individual related by consanguinity within the second degree as determined by common law, a spouse, or an individual related to a spouse within the second degree as so determined, and includes an individual in an adoptive relationship within the second degree.

261—49.18(404A) Certificate issuance; claiming the tax credit. After determining whether the terms of the agreement, Iowa Code chapter 404A, and the applicable rules have been met, the authority shall issue a tax credit certificate to the eligible taxpayer stating the amount of tax credit under Iowa Code section 404A.2 the eligible taxpayer may claim, or the authority shall issue a notice that the eligible taxpayer is not eligible to receive a tax credit certificate. The authority shall issue the tax credit certificate or the notice not later than 60 days following the completion of the examination review, if applicable, and the verifications required under this rule. Notwithstanding the foregoing, the eligibility of the tax credit remains subject to audit by the department of revenue in accordance with Iowa Code chapters 421 and 422. For information on how to claim the tax credit, see department of revenue rules 701—42.55(404A,422), 701—52.48(404A,422), and 701—58.10(404A,422).

261—49.19(303,404A) Appeals. Any person wishing to contest an application denial, the amount of the tax credit award, award revocation, or any authority action that entitles the person to a contested case proceeding shall file an appeal, in writing, within 30 days of the action giving rise to the appeal. Any person who does not seek an appeal within 30 days of the action that gives rise to a right to a contested case proceeding shall be precluded from challenging the action. Appeals will be governed by the procedures set forth in this rule, together with the process set out in Iowa Code sections 17A.10 to 17A.19. Challenges to an action by the department of revenue related to tax credit transfers, claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to department of revenue 701—Chapter 7.

49.19(1) Contents. The appeal shall contain the following in separate numbered paragraphs:

a. A statement of the authority action giving rise to the appeal.

b. The date of the authority action giving rise to the appeal.

c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.

d. Reference to the particular statutes, rules, or agreement terms involved, if known.

e. A statement setting forth the relief sought.

f. The signature of the person or that person's representative and the mailing addresses, telephone numbers, and e-mail addresses of the person and the person's representative.

49.19(2) *Contested case proceedings.* The presiding officer in any contested case proceeding shall be an administrative law judge who specializes in tax matters.

These rules are intended to implement Iowa Code chapter 404A.

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